IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1707 OF 2005

Hansa Pratap Sampat ..Petitioner

Vs.

Judge and Special
Metropolitan Magistrate,
28th Small Causes Court
& Ors. ..Respondents

...

Mr.P.M.Vyas i/b Mr.Vinod B.Singh Advocate for Petitioner.
Mr.Prashant Chande with Mr.A.P.Mundergi i/b M/s.Manilal Kher Ambalal & Co. for Respondent no.2.
Mr.Rames More A.P.P. for the State.

...

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : JULY 26,2005

P.C.

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State.

2. The petitioner is seeking quashing of process issued by the learned Addl.Chief M.M.Court, Small Causes Court at Mumbai in C.C.No.2276/SS/05. In the said case process is issued under Section 138

r.w. 141 of Negotiable Instruments Act. The petitioner has preferred an application before the learned Magistrate for recall of process. The learned Magistrate rejected the said application in view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal and Ors. [2004(4) Mh.L.J.274]**. In view of the said decision, no fault can be found with the order of the learned Magistrate, hence, I am not inclined to interfere with the order of the learned Magistrate rejecting the application for recall of process.

3. However, for the reasons recorded in my order dated 13th June, 2005 in W.P.No. 213 of 2005 and dated 21st June, 2005 in Cri.Application No.550 of 2005, I am of the opinion that the petitioner has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioner prefers a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the petitioner to prefer

the necessary revision before the concerned Sessions Court. The learned advocate for the petitioner makes a statement that the necessary revision will be preferred within four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of four weeks. It is made clear that the stay is in respect of the present petitioner only. The learned advocate for the complainant fairly makes a statement that no objection will be raised in respect of delay in filing the revision.

5. It is made clear that the revision will be preferred in respect of the order of the learned Magistrate issuing process against the petitioner and not in respect of the order of the Magistrate rejecting the application for recall of process.

6. On the necessary revision being preferred by the petitioner before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties.

7. Writ Petition is disposed of.

[V.K.TAHILRAMANI,J.]